

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|--|---|---------------------|
| PIETRO A. BARBIERI, ESQ., <u>ET AL,</u> | : | |
| | : | CIVIL ACTION |
| Plaintiffs, | : | |
| | : | |
| v. | : | No. 16-3748 |
| | : | |
| THE UNITED STATES OF | : | |
| AMERICA, <u>ET AL.,</u> | : | |
| Defendants. | : | |
| | : | |

ORDER

AND NOW, this 28th day of September, 2017, upon consideration of “The United States’ Motion to Dismiss Plaintiffs’ Federal Tort Claims Act Counts Against It,” (Doc. No. 11), “The Individual Defendants’ Motion to Dismiss Plaintiff’s Constitutional Claims Against Them” (Doc. No. 12), Plaintiffs’ Responses (Doc. Nos. 17 & 18), Defendants’ Replies (Doc. Nos. 19 & 20), “The Individual Defendants’ Notice of Supplemental Authority” (Doc. No. 21), and “Plaintiffs’ Response to the Individual Defendants’ Notice of Supplemental Authority” (Doc. No. 22), it is hereby **ORDERED** that Defendants’ motions to dismiss are both **GRANTED**, such that Counts I and II are dismissed with prejudice as to the United States of America, and Count III is dismissed with prejudice as to AUSA Anita Eve. It is further **ORDERED** that the Amended Complaint is **DISMISSED**.

Mr. Barbieri may file a Second Amended Complaint against only Defendant Special Agent Brian Cosgriff as to Count III within **thirty (30) days** of this Order to attempt to cure the deficiencies discussed in the accompanying Opinion Memorandum.¹

¹ After a motion to dismiss has been filed, a district court should inform a plaintiff if he has leave to amend his complaint within a set period of time, unless an amendment would be inequitable or

BY THE COURT:

/s/ Mitchell S. Goldberg

Mitchell S. Goldberg, J.

futile. Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002). I find that it is conceivable that Mr. Barbieri could state a claim against Defendant Special Agent Brian Cosgriff as to Count III. It would be futile for Plaintiffs to attempt to amend Counts I or II as to the United States of America, or Count III as to AUSA Anita Eve, because those claims are precluded by law.